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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 11)
and 13 of the Cable Television)
Consumer Protection and)
Competition Act of 1992)

MM Docket No. 92-264

Horizontal and Vertical Ownership)
Limits, Cross-Ownership)
Limitations and Anti-trafficking)
Provisions)

To: The Commission

REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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Dated: March 3, 1993

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FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

On behalf of the Coalition of Small System Operators, 1/ we hereby reply to comments filed in the captioned proceeding.

In initial comments in the captioned proceeding, the Small System Operators sought blanket waiver of the three-year holding period (and the related certification requirement) for those very small systems with less than 1,000 subscribers. The Small System Operators also urged

1/ The Coalition of Small System Operators includes: Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA/MW1 Cablesystems, Inc., Buford Television, Inc., Triax Communications Corp., Douglas Communications Corp., II, Leonard Communications, Inc., Phoenix Cable, Inc. and Star Cable Associates. The Coalition, which has participated in other rulemaking proceedings related to the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), continues to expand. Therefore, the numbers of subscribers, systems, etc. served by these operators may be different than those supplied previously.

that the three-year period be calculated realistically so as not to unnecessarily interfere with bona fide system sales. If the Commission chooses not to grant a blanket waiver for systems with fewer than 1,000 subscribers, the Small System Operators request that the FCC, and not local franchise authorities, regulate small systems sales.

Several commenters propose rigid interpretation of the statutory language and the imposition of unduly harsh substantive and administrative burdens on all operators. 2/

I. IF SMALL SYSTEMS ARE NOT EXEMPT FROM ANTI-TRAFFICKING RULES, FCC SHOULD ENFORCE RULES.

Many of the systems operated by the Small System Operators serve multiple franchise areas. The Small System Operators have asked for a blanket waiver of the anti-trafficking rules for systems with less than 1,000 subscribers on the theory that there is little danger of profiteers trafficking in these small systems with marginal profits. If the Commission chooses not to approve a blanket waiver, the Small System Operators request that the Commission, and not local franchise authorities, enforce the anti-trafficking rules.

Several commenters suggest that local franchise authorities should administer the rules. In support of the proposition that franchise authorities should enforce anti-trafficking rules, one commenter suggests that the "vast majority" of franchise agreements currently require franchise authority approval of system sales. 3/ The implication from this

2/ See, e.g., Comments of National Association of Telecommunications Officers and Advisors ("NATOA") at 5, 7, 9 and 10-12.

3/ Comments of NATOA at 5.

statement is that FCC rules delegating to franchise authorities the task of approving system sales would not impose much of a burden since the requirement already exists on a local level for the "vast majority" of systems. Although this may be true for larger systems, the experience of the Small System Operators is that only about half of their franchise agreements require franchise authority approval of system sales. If the Commission gives every single franchise authority the ability to regulate system sales, Small System Operators will face greatly increased administrative burdens because they will have to seek approval from so many different local authorities for a single transfer. On the other hand, if the Commission were to enforce the three-year holding period rule, just one filing would be required even in a multiple-system transaction.

Moreover, the administrative burdens would be particularly severe for small systems if they are required to submit not only certifications of compliance with anti-trafficking rules, but also evidence of compliance, as suggested by one commenter. ^{4/} It is unclear what interests would be served by the redundant requirement that evidence of compliance be submitted in addition to a certification of compliance with the rules. A certification of compliance should suffice without more.

II. PROCEDURAL RULES SHOULD PERMIT THE FCC TO WAIVE THE THREE-YEAR HOLDING RULE WITHOUT FRANCHISE AUTHORITY INVOLVEMENT.

For the FCC to adopt the requirement that a franchise authority must approve a transfer before the FCC may consider a waiver of the anti-trafficking rules would double the administrative burden on

^{4/} Comments of NATOA at 7-8.

systems seeking waiver of the three year rule. Of course, where franchise agreements provide that systems must seek franchise approval of transfers, local approval of the sale must be sought in any event. However, where franchise approval is not required by the franchise agreement, the FCC should be able to waive the anti-trafficking rules without the involvement of local officials.

III. MULTIPLE SYSTEM SALES SHOULD RECEIVE SPECIAL TREATMENT.

As recognized by the FCC in its Notice of Proposed Rulemaking in this proceeding, it would be inappropriate to treat the sale of multiple systems the same as sale of a single system. 5/ The Commission should not be dissuaded from this position by near-sighted comments stating that it is "irrelevant whether one system is being transferred or 1,000." 6/ As detailed in the Comments filed by the Small System Operators, it is highly relevant whether one system is being sold or 1,000 systems are being sold. To the extent that the three-year holding period requirement is imposed on a system-by-system basis with respect to sales of multiple systems, the rule may result in increased subscriber rates because it may deny operators the economies of operating in a certain manner (e.g. operating clusters of systems). For example, if an operator sells all of its systems in a given geographic area, except for one which is less than three years old, the cost to operate that lone system will be substantial because there are no efficiencies in single system operation. The operator may

5/ Notice of Proposed Rulemaking at ¶ 14.

6/ Comments of NATOA at 12.

have to increase rates to compensate for this inefficient, high-cost operation. Therefore, blind application of the three-year holding period requirement to multiple system sales could cause the very result -- increased subscriber costs -- that the provision was designed to avoid.

IV. THE THREE-YEAR HOLDING PERIOD DEFINITION SHOULD NOT DISCOURAGE SYSTEM GROWTH.

It is critical that the definition of the three-year holding period not discourage system expansion. For example, one commenter suggests the holding period should not commence until construction is completed and service is available throughout the franchise area. ^{7/} This definition implies that an entire franchise area must be served by an operator before the three-year period would begin to run. Adoption of this definition would discourage expansion of existing systems. The Commission should instead adopt the Small System Operators' suggestion that the three-year holding period commence on the date when the system provides service to its first subscriber.

V. CONCLUSION.

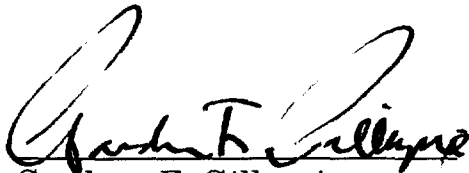
Small systems with less than 1,000 subscribers should receive a blanket waiver of the three-year holding rule because there is little danger that profiteers could benefit from such a waiver. If a blanket

^{7/} Comments of NATOA at 8.

waiver is not approved, the Commission should adopt rules which do not penalize small multiple system operators or discourage system expansion.

Respectfully submitted,

COALITION OF SMALL SYSTEM
OPERATORS

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Dated: March 3, 1993

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NAME OF OPERATOR	TOTAL # OF SUBSCRIBERS	TOTAL # OF COMMUNITY UNITS	TOTAL # OF STATES SERVED	TOTAL # OF HEADENDS	# OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE # OF SUBSCRIBERS	AVERAGE # OF HOMES PASSED PER MILE	AVERAGE # OF MILES OF PLANT	AVERAGE # OF ACTIVATED CHANNELS	AVERAGE # OF SUBSCRIBERS PER MILE	AVERAGE PENETRATION
Douglas Comm. Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Comm. Corp.	364	39	15	22	25	61%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%
Leonard Comm., Inc.	252	40	9.6	19.9	26	65%
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7	52%

CERTIFICATE OF SERVICE

I, Peggy E. Gelinas, hereby certify that copies of the foregoing Reply Comments of Coalition of Small System Operators were mailed, by first class mail, postage prepaid this 3rd day of March to:

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